

**EXHIBIT “H”**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PETER A. BORRUSO,

Plaintiff,

-against-

**ATTORNEY DECLARATION**

11 CIV 7085 (NSR-LMS)

THE CITY OF PORT JERVIS, SERGEANT  
CHRISTOPHER W. SARGENTE, shield #0149 and  
POLICE OFFICERS JANE/JOHN DOE(S) #'s 1-5,

Defendants.  
-----X

**DECLARATION MADE IN SUPPORT OF DEFENDANTS' APPLICATION FOR AN AWARD  
FOR STATUTORY COSTS AND REASONABLE ATTORNEYS' FEES PURSUANT TO 42  
USCA § 1988 AS THE PREVAILING PARTY IN THIS ACTION**

HOBART J. SIMPSON, an attorney duly admitted to practice law before the United States District Court for the Southern District of New York, declares the following to be true under penalties of perjury pursuant to 28 U.S.C. §1746:

1. I am a member of the firm Catania, Mahon, Milligram, & Rider, PLLC, ("CMMR") attorneys for defendants THE CITY OF PORT JERVIS, SERGEANT, CHRISTOPHER W. SARGENTE, shield #0149 and POLICE OFFICERS JANE/JOHN DOE(S) #'s 1-5. I am familiar with the prior proceedings and papers filed in this action and submit this declaration in support of the defendants' motion, pursuant to 42 USC 1988(b) and Rule 54(d)(2) of the Federal Rules of Civil Procedure, for an award of reasonable attorneys fees to the City of Port Jervis and Christopher Sargente ("Sgt. Sargente").

2. Plaintiff filed a complaint against the Defendants on October 7, 2011 alleging false arrest, malicious prosecution, denial of fair trial, first amendment retaliation and use of excessive force pursuant to 42 U.S.C. §1983.

3. I am the principal attorney handling this file who was responsible for the day-to-day management and handling of defendants' defense. However, due to health issues, it was necessary for me to take a medical leave of absence prior to the trial of this case. The file was transitioned to Joseph G. McKay, a partner and experienced litigator in our firm.

Credentials of Counsel

4. I am a member of the Bar of the State of New York (2001), as well as the United States District Court for Northern and Southern District. I graduated from Albany Law School more than fourteen years ago. Since my graduation from Albany Law School in 2000, I have been employed with CMMR. I became partner at CMMR in 2009. I am a member of the New York State Bar Association, Orange County State Bar Association, and the Women's Bar Association of Orange and Sullivan Counties.

5. I have broad litigation experience involving both civil and commercial litigation, medical and professional malpractice and municipal liability. I regularly represent municipalities in matters involving general liability, personal injury claims, and civil rights matters. Accordingly, I submit that I have a high professional standing in general and in these areas of practice.

Attorney's Fees Incurred to Date

6. Collectively annexed to Defendants' application as Exhibit "A" are true and accurate copies of our office's computer generated summary of all time charges from October 24, 2011 to the present which detail the legal services rendered by me and the other attorneys and staff at CMMR.

7. As mentioned above, in my capacity as a member of the law firm CMMR, I represented Defendants as litigation counsel in this action. I was the assigned attorney to this matter and oversaw the case from its commencement in October of 2011 through pre-trial preparation in June of 2014. As reflected in Exhibit "A", over the course of three years, I personally rendered a total of 173.3 hours in legal services all of which were directly related to, and necessarily incurred as a result of, defending Defendants in this action.

8. As the lead attorney handling this file, my legal services were in connection with investigating plaintiff's claims, meeting with clients, preparing pleadings, completing discovery, conducting legal research into liability issues and affirmative defenses, engaging in settlement negotiations, attending conferences, preparing a legal strategy to defend against plaintiff's claims, and preparing the case for trial.

9. Although my customary billing rate is \$360.00 per hour, CMMR charged Defendants and/or their principal a discounted rate of \$210.00 for the legal services rendered by me. The lodestar attorney's fee calculation for the legal services rendered by me is 173.3 hours multiplied by \$210.00, equaling a request of \$36,393.00.

10. This discounted hourly rate, as reflected in paragraph (10) above, is substantially less than the customary rate charged by CMMR for similar professional legal services rendered and is below the customary rate charged for similar legal services within the surrounding Hudson Valley area.

11. For the reasons set forth in defendants' Memorandum of Law submitted in support of defendants' application, it is respectfully requested that this Court find that plaintiff's claims against the City of Port Jervis and Christopher Sargente were frivolous and unreasonable and award defendants' their reasonable attorneys fees as the prevailing party under 42 USC §1988.

Dated: Newburgh, New York  
August 14, 2014

s/ Hobart J. Simpson  
HOBART J. SIMPSON (HS-0111)